



United States Government Accountability Office

Report to the Honorable Judy Chu,  
House of Representatives

December 2021

# SMALL BUSINESS ADMINISTRATION

## Steps Taken to Verify Tribal Recognition for 8(a) Program

Accessible Version



# GAO Highlights

Highlights of [GAO-22-104146](#), a report to the Honorable Judy Chu, House of Representatives

## Why GAO Did This Study

According to SBA officials, in fiscal year 2020, federal 8(a) contract obligations for the overall SBA 8(a) program totaled about \$19.7 billion and 3,364 8(a) participants were awarded federal 8(a) contracts for the same period.

Prior GAO and SBA Office of Inspector General (OIG) reports identified challenges regarding SBA's oversight of the 8(a) program. For example, in March 2021, the OIG reported that SBA had no formal procedures for verifying the tribal recognition status of Indian tribes associated with 8(a) applications, which SBA plans to address by December 2021.

GAO was asked to evaluate the effectiveness of SBA's verification of the tribal recognition of the Indian tribe associated with 8(a) businesses applying to the program. This report addresses: (1) the extent to which business applicants certified to participate in the 8(a) program were associated with a recognized Indian tribe as claimed for fiscal years 2018 through 2020; and (2) what covert testing results demonstrated about SBA's verification of tribal recognition status in fiscal year 2021.

GAO compared SBA's tribal name data to information maintained by the BIA and research GAO conducted previously. GAO also used covert tests to assess whether SBA took steps to verify tribal recognition of fictitious Indian tribes associated with GAO's fictitious applications. These tests were illustrative and cannot be generalized to all applications.

View [GAO-22-104146](#). For more information, contact Seto J. Bagdoyan at (202) 512-6722 or [bagdoyans@gao.gov](mailto:bagdoyans@gao.gov) or James (Howard) Arp at (202) 512-6722 or [arpj@gao.gov](mailto:arpj@gao.gov).

December 2021

## SMALL BUSINESS ADMINISTRATION

### Steps Taken to Verify Tribal Recognition for 8(a) Program

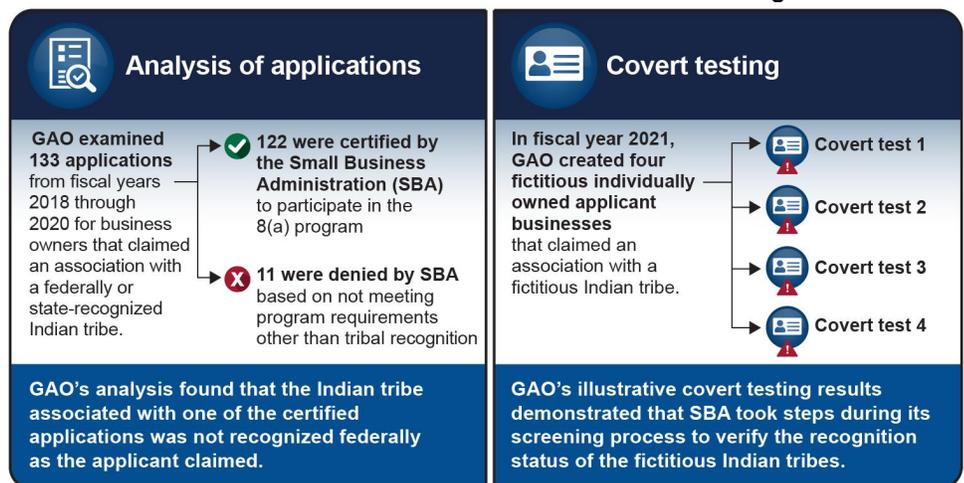
## What GAO Found

The U.S. Small Business Administration's (SBA) 8(a) Business Development program was created to help develop small businesses owned and controlled by socially and economically disadvantaged individuals and entities, including Indian tribes that are federally or state-recognized. The program provides such businesses with an opportunity to compete on an equal basis in the American economy. Specifically, businesses that participate in the 8(a) program can receive federal contracts that have been set aside for 8(a) program participants.

According to SBA's standard operating procedures, for businesses seeking entry into the program based on association with a recognized Indian tribe, SBA's Business Opportunity Specialists (BOS) are responsible for verifying tribal recognition during the application process. The BOS determines whether the Indian tribe is recognized for SBA purposes based on a review of the business applicant's supporting evidence compared to tribal information maintained at the federal or state government levels. The Department of Interior, Bureau of Indian Affairs (BIA) publishes an annual list of all federally recognized Indian tribes. Additionally, some state governments publish information regarding the Indian tribes that they have recognized.

GAO's analysis of application data for fiscal years 2018 through 2020 indicates that all but one of the 122 participating 8(a) businesses were associated with a recognized Indian tribe as claimed. As a result of this finding, SBA officials told GAO that SBA is initiating steps to terminate that one business's participation in the 8(a) program. Further, GAO's illustrative covert testing results demonstrated that SBA took steps to verify the recognition status of fictitious Indian tribes, despite not yet documenting formal procedures for verifying tribal recognition.

## Results from GAO's Evaluation of SBA's Verification of Tribal Recognition



Source: GAO. | GAO-22-104146

**Analysis of applications**

- GAO examined 133 applications from fiscal years 2018 through 2020 for business owners that claimed an association with a federally or state-recognized Indian tribe.
  - 122 were certified by the Small Business Administration (SBA) to participate in the 8(a) program
  - 11 were denied by SBA based on not meeting program requirements other than tribal recognition
- GAO's analysis found that the Indian tribe associated with one of the certified applications was not recognized federally as the applicant claimed.

**Cover testing**

- In fiscal year 2021, GAO created four fictitious individually owned applicant businesses that claimed an association with a fictitious Indian tribe.
- GAO's illustrative covert testing results demonstrated that SBA took steps during its screening process to verify the recognition status of the fictitious Indian tribes.

Source: GAO. | GAO-22-104146

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**Abbreviations**

BIA	Bureau of Indian Affairs
BOS	Business Opportunity Specialists
SBA	Small Business Administration
SBA OIG	Small Business Administration Office of Inspector General
SOP	Standard Operating Procedures
8(a) program	SBA 8(a) Business Development Program

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December 2, 2021

The Honorable Judy Chu  
House of Representatives

Dear Ms. Chu:

The U.S. Small Business Administration's (SBA) 8(a) Business Development Program—commonly known as the “8(a) Program”—was created to help develop small businesses owned and controlled by socially and economically disadvantaged individuals and entities.

Specifically, the 8(a) Program generally provides up to 9 years of support, including training and technical assistance as it pertains to obtaining federal contracts, to participating small businesses.<sup>1</sup> This assistance is designed to enhance the participants' ability to eventually compete equally in the American economy for contracting opportunities outside the 8(a) program. Business owners may include members of certain designated groups, such as enrolled members of a federally or state-recognized Indian tribe, or the federally or state-recognized Indian tribe itself. The Department of the Interior, Bureau of Indian Affairs (BIA) publishes an annual list of all federally recognized Indian tribes.<sup>2</sup> Additionally, some state governments publish information regarding the Indian tribes that they have recognized.

SBA's process for certifying businesses to participate in the program consists of a multi-level eligibility review. Once certified to participate in the program, 8(a) businesses can receive federal contracts that have been set aside for 8(a) program participants. Such contracts may be awarded on a competitive basis through competition with other 8(a) participants, or may be awarded on a sole-source basis without having to compete against other businesses when certain program requirements are met. According to SBA officials, in fiscal year 2020, federal 8(a) contract obligations for the overall program totaled about \$19.7 billion and

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<sup>1</sup>Small businesses participating in the 8(a) program on March 13, 2020 may elect to extend their participation for one additional year. 13 C.F.R. § 124.2(b).

<sup>2</sup>As of October 2021, the BIA list consists of 574 federally recognized tribes. 86 Fed. Reg. 7554 (Jan. 29, 2021) and 86 Fed. Reg. 18552 (April 9, 2021).

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3,364 8(a) participants were awarded federal 8(a) contracts for the same period.

SBA Office of Inspector General (OIG) and our own prior reports identified challenges regarding SBA's oversight of the 8(a) program.<sup>3</sup> The OIG also reported that SBA had no formal documented verification procedures for verifying the federal or state-recognition status of Indian tribes associated with tribal applications.<sup>4</sup>

As Chair of the Subcommittee on Investigations, Oversight and Regulations, of the Committee on Small Business, you asked us to evaluate the effectiveness of SBA's verification of the federal or state-recognition of the Indian tribe associated with an individually owned or tribally owned business applying to the 8(a) program.<sup>5</sup> This report addresses: (1) the extent to which business applicants certified to participate in the 8(a) program were associated with a federally or state-recognized Indian tribe as claimed, for fiscal years 2018 through 2020, and (2) what covert testing results demonstrated about SBA's verification of tribal recognition status in fiscal year 2021.

To determine the extent to which business applicants certified to participate in the 8(a) program were associated with a federally or state-recognized Indian tribe as claimed for fiscal years 2018 through 2020, we compared the tribal name data from SBA's Certify online application system for individually and tribally owned businesses applying to the 8(a) program to the 2020 list of federally recognized Indian tribes maintained

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<sup>3</sup>GAO, *Small Business Administration: Steps Taken on Long Standing Weaknesses in SBA's Oversight of Tribal 8(a) Firms, but Additional Actions Needed*, [GAO-20-184T](#) (Washington, D.C.: October 22, 2019).

<sup>4</sup>Small Business Administration, Office of Inspector General, *Evaluation of SBA's Eligibility Verification of 8(a) Firms Owned by Members of Federally or State-Recognized Indian Tribes*, 21-12 (Washington, D.C.: March 31, 2021).

<sup>5</sup>For the purposes of this report, individually owned businesses are those at least 51 percent unconditionally and directly owned and controlled by one or more socially and economically disadvantaged individuals who are enrolled members of a federally or state-recognized Indian tribe. 13 C.F.R. §§ 124.103(b)(1), 124.105, and 124.106. Tribally owned businesses are those at least 51 percent owned and controlled by a federally or state-recognized Indian tribe. 13 C.F.R. § 124.109(c)(3) and (4).

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by the BIA.<sup>6</sup> We also compared the tribal name data to research on state-recognized Indian tribes we conducted in 2012.<sup>7</sup>

We conducted a data reliability assessment of SBA's Certify application data. We determined that the data were sufficiently reliable for the purposes of our reporting objectives. This assessment included reviewing relevant documentation, interviewing knowledgeable SBA officials, and performing electronic testing of relevant data fields. Specifically, we performed electronic tests to determine the completeness and accuracy of key fields used for data matching purposes as well as reviewed agency officials' responses to data-quality questions regarding the system's purpose and structure, definitions and values for selected fields, and information on any data limitations.

To determine what covert testing results demonstrated about SBA's verification of tribal recognition status in fiscal year 2021, our criminal investigators used covert tests to assess whether SBA took steps to verify federal or state-recognition of the fictitious Indian tribe in which our individually owned business applicants claimed to be enrolled. Specifically, our criminal investigators used Certify to apply for 8(a) program certification for four fictitious businesses during fiscal year 2021 using fictitious documentation. Each application was designed to present information that clearly disqualified our individually owned business applications based on tribal recognition status.

One test was conducted in each of four states. These states were selected based on sources we reviewed to identify the locations of federally and state-recognized Indian tribes. First, to ensure we adequately represented geographic regions where Indian tribes were predominantly located, we selected the state where the highest number of federally recognized Indian tribes were located. Second, we selected the state where the highest number of state-recognized Indian tribes were located. Third, we selected one state where no federally or state-

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<sup>6</sup>SBA's Certify online application system is used by applicants to enter the 8(a) program. Certify launched in fiscal year 2018. Prior to fiscal year 2018, 8(a) applications were in hard copy form. Our time period includes the last 3 fiscal years of application data from SBA's Certify system that were available at the time of our audit.

<sup>7</sup>In 2012, GAO reviewed non-federally recognized groups receiving federal funding. We identified several states that had state-recognized Indian tribes. Officials in these states identified over 60 state-recognized Indian tribes that are not federally recognized as of September 2011. GAO, *Indian Issues: Federal Funding For Non-Federally Recognized Tribes*, [GAO-12-348](#) (Washington, D.C.: April 12, 2012).

recognized Indian tribes were located. Fourth, we selected the state where the highest number of both federally and state-recognized Indian tribes were located.

The purpose of our covert testing was to test SBA's controls for the tribal recognition requirement as it pertains to individually owned applicants. We did not test SBA's tribal recognition controls for tribally owned applicants claiming to be federally or state-recognized Indian tribes. We determined that the individually owned business model allowed us to test whether the SBA verifies claims of membership in a federally or state-recognized Indian tribe for eligibility. Our scope and methodology did not include testing whether the rest of our fictitious applicants' documents (e.g., financial statements) were accepted by SBA to ultimately receive 8(a) certifications. The results of our covert tests are illustrative and are not generalizable to the universe of 8(a) applicants.

We conducted this performance audit from February 2020 to December 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings based on our audit objectives. We conducted our related investigative work in accordance with investigative standards prescribed by the Council of the Inspector General on Integrity and Efficiency.

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## Background

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### Enrolled Members of Federally or State-Recognized Indian Tribes and Federally or State-Recognized Indian Tribe Participation in SBA's 8(a) Program

The 8(a) program was created to assist eligible socially and economically disadvantaged owners of small businesses. Businesses that participate in the 8(a) program are eligible for business development opportunities that can assist them in competing in the American economy upon program

graduation.<sup>8</sup> For example, participating businesses receive management and technical assistance, including business training, counseling, marketing assistance, and high-level executive development. As mentioned previously, under certain circumstances, businesses participating in the 8(a) program may also benefit from federal contracting preferences in the form of sole-source awards. Each year, the federal government awards about 10 percent of all federal contract dollars, or roughly \$50 billion, to businesses participating in the 8(a) program. The 8(a) program is administered by SBA's Office of Business Development. The Office of Business Development includes Business Opportunity Specialists (BOS) that receive, review, and evaluate all 8(a) program applications.

Under the Small Business Act and SBA regulations, socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within the American society because of their identities as members of designated groups and without regard to their individual qualities. There is a rebuttable presumption that members of certain designated groups are socially disadvantaged. For example, enrolled members of a federally or state-recognized Indian tribe, or the recognized Indian tribe itself, are presumed to be socially disadvantaged.<sup>9</sup> Social disadvantage is distinct from economic disadvantage, which is not presumed for enrolled members of a federally or state-recognized Indian tribe nor the recognized Indian tribe itself, and which also must be demonstrated to SBA in order to be accepted into the 8(a) program.

According to the Federally Recognized Indian Tribe List Act of 1994, Indian tribes may be federally recognized by an Act of Congress; by the

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<sup>8</sup>The Small Business Act indicates "that the opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons is essential if we are to obtain social and economic equality for such persons and improve the functioning of our national economy." 15 U.S.C. § 631(f)(1)(A).

<sup>9</sup>The presumption of socially disadvantaged status may be overcome with credible evidence to the contrary. Individuals possessing or knowing of such evidence should submit the information in writing to the SBA Associate Administrator for Business Development for consideration. 13 C.F.R. § 124.103(b)(3). In 1986, Congress amended the Small Business Act to permit small businesses owned by a federally or state-recognized Indian tribe to participate in the 8(a) program. Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. No. 99-272, § 18015, 100 Stat. 82, 370 (1986). In 2011, SBA updated its regulations to clarify that an individual must be an enrolled member of a federally or state-recognized Indian tribe to be considered presumptively socially disadvantaged, providing a clearer standard than previous regulations. 76 Fed. Reg. 8222, 8229 (Feb 11, 2011).

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Department of Interior's administrative procedures set forth at 25 C.F.R Part 83; or by a decision of a United States court.<sup>10</sup> As mentioned earlier, BIA publishes the Indian tribe's name in an official list of federally recognized Indian tribes in the Federal Register.

State governments can also recognize Indian tribes, as mentioned earlier. As we reported in 2012, the tribal-recognition processes used by states vary, and no federal agency maintains a list of state-recognized Indian tribes.<sup>11</sup> SBA's BOS determine whether the Indian tribe is state-recognized for SBA purposes based on a review of the application and supporting evidence.

Over the period for fiscal year 2018 through fiscal year 2020, a total of 1,392 businesses were admitted to the 8(a) program. Of these, 122, or about 9 percent, were either tribally owned or owned by an enrolled member of a federally or state-recognized Indian tribe.<sup>12</sup>

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## SBA's Verification of Federal and State Tribal Recognition

SBA's standard operating procedures (SOP) generally describe the documentation requirements and applicant information needed to enter the program. Documentation requirements to support tribal recognition can differ depending on the ownership of the 8(a) business. For instance, individually owned businesses are not required to provide proof of their tribe's recognition status but are required to submit a copy of the owner's tribal membership card. SBA uses the tribal membership card to verify whether the individual owner's Indian tribe has been federally or state-recognized. A tribally owned business, however, must submit evidence of federal or state-recognition of the tribe that owns the business. In both instances, SBA must verify that the Indian tribe is federally or state-recognized.

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<sup>10</sup>Pub. L. No. 103-454, § 103, 108 Stat. 4791 (1994), codified at 25 U.S.C. § 5130 note. The Act states that the Secretary of the Interior is charged with the responsibility of keeping a list of all federally recognized Indian tribes. The Act also states that the list published by the Secretary should be accurate and regularly updated and published because various departments and agencies of the United States use it to determine eligibility for the special programs and services provided by the United States to Indians because of their status as Indians.

<sup>11</sup>[GAO-12-348](#).

<sup>12</sup>This total does not include Alaska Native Corporations or their subsidiaries.

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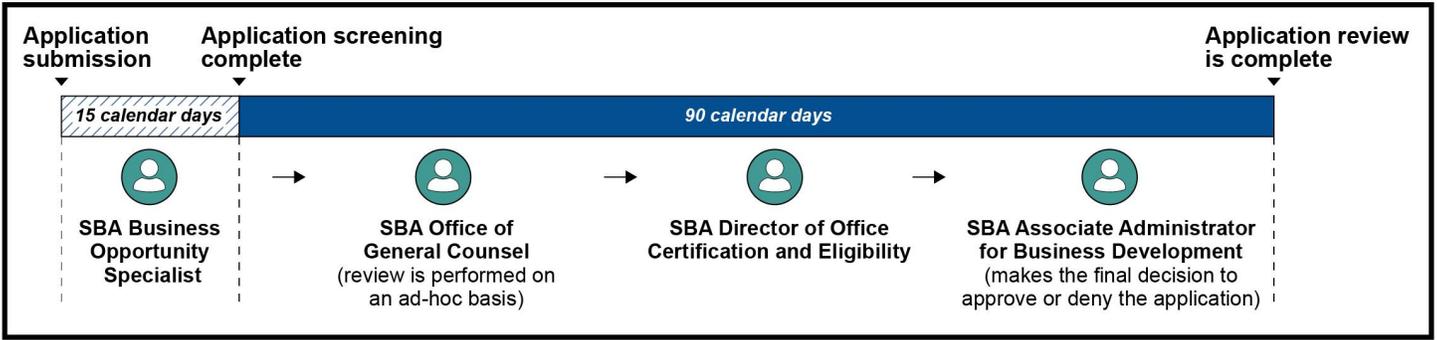
After all documents are submitted via Certify, an SBA BOS screen the application for completeness.<sup>13</sup> The BOS is to advise each program applicant within 15 days after the receipt of an application whether the application is complete and suitable for evaluation and, if not, what additional information or clarification is required to complete the application (see fig. 1).<sup>14</sup>

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<sup>13</sup>To apply for the 8(a) program, applicants must use SBA's Certify.sba.gov, an online application system, to submit documents to prove that the applicants meet the 8(a) program qualifications. Beginning in fiscal year 2018, SBA required that all 8(a) applications be submitted and processed online in SBA's Certify system. According to SBA officials, the primary goal of SBA's Certify system is to offer better functionality to upload documents, streamline the certification process, improve productivity by providing management views of in-progress applications, automate repetitive tasks, and make document review straightforward.

<sup>14</sup>BOS initially screen applications for the 8(a) program to ensure the applications are complete, all required documents are enclosed, and that they are ready for a supervisor to review for eligibility. During this review period, the BOS must also verify that the Indian tribe associated with the 8(a) application is federally or state-recognized for the applicant to be presumed to be socially disadvantaged, as per the SOP. If, during the eligibility 15-day review process, the BOS determines that an application is "substantially incomplete," the BOS may request additional information or clarification from the applicant. After reviewing the application, the BOS submit the file and recommendation letter to the Chief of the Central Office Duty Station for review and a second recommendation to approve or decline the application. The two recommendations are forwarded to the Director of Office of Certification and Eligibility, who reviews the file and recommends approving or denying the application for 8(a) certification. After the Director's review, the Associate Administrator for Business Development makes the final decision to approve or deny the application for 8(a) certification.

**Figure 1: Period of SBA’s Review of 8(a) Applications**



**15-day review period**  
 The Small Business Administration (SBA) has a 15-day review period to screen an application for completeness, and to request more information if the application is insufficient. This process is completed by the SBA Business Opportunity Specialist.

**90-day review period<sup>a</sup>**  
 The SBA has a 90-day review period to ensure that the application meets eligibility requirements and either accept or decline the application from the program. In this review period, the application is reviewed by the SBA Office of General Counsel (on an ad-hoc basis, depending on the details and complexity of the application), then the SBA Director of Office Certification and Eligibility, then the SBA Associate Administrator for Business Development who makes the final decision to approve or deny the application.

**SBA application reviewer**

Source: GAO analysis of SBA information. | GAO-22-104146

**Text of Figure 1: Period of SBA’s Review of 8(a) Applications**

**Application submission**

- 15-day review period: 15 calendar days
- Application reviewer: SBA Business Opportunity Specialist

**Application screening**

- 90-day review period: 90 calendar days
- Application reviewer: SBA Office of General Counsel (review is performed on an ad-hoc basis), SBA Director of Office Certification and Eligibility, SBA Associate Administrator for Business Development (makes the final decision to approve or deny the application)

**Application review is complete**

**15-day review period**

The Small Business Administration (SBA) has a 15-day review period to screen an application for completeness, and to request more information if the application is insufficient. This process is completed by the SBA Business Opportunity Specialist.

**90-day review period<sup>a</sup>**

The SBA has a 90-day review period to ensure that the application meets eligibility requirements and either accept or decline the application from the program. In this review period, the application is reviewed by the SBA Office of General Counsel (on an ad-hoc basis, depending on the details and complexity of the application), then the SBA Director of Office Certification and Eligibility, then the SBA Associate Administrator for Business Development who makes the final decision to approve or deny the application.

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<sup>a</sup>The 90 day review period and processing time could be suspended by SBA for various reasons (e.g., referral to OIG; size standards issue).

Source: GAO analysis of SBA information. | GAO-22-104146

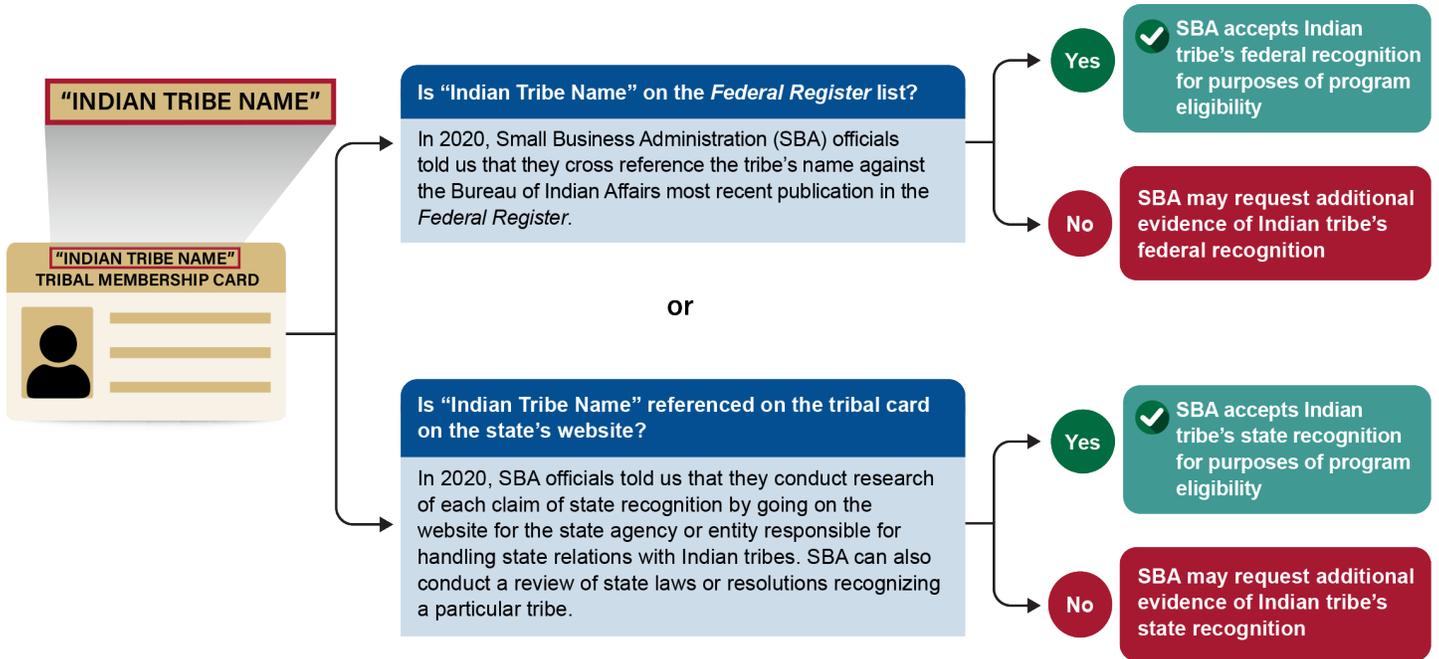
According to the SOP, SBA will process an application for 8(a) program participation within 90 days of receipt of a complete application package. During this 90-day review period, the application is reviewed by the Office of General Counsel on an ad-hoc basis, depending on the details and complexity of the application. If the Office of General Counsel completes a review, the application is then reviewed by the Director of Office of Certification and Eligibility, and finally by the Associate Administrator for Business Development, who makes the decision to approve or deny the application for acceptance into the program (as indicated in figure 1).<sup>15</sup>

According to SBA officials, during the review period for individually owned applicants, SBA reviewers, including BOS, use the tribal membership card and other documentation provided by the applicant to verify the applicant's socially disadvantaged status by confirming that the tribe named on the card is a federally or state-recognized Indian tribe (see fig. 2).

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<sup>15</sup>The 90-day review period and processing time could be suspended by SBA for various reasons (e.g., referral to the OIG).

**Figure 2: SBA’s Process to Verify Tribal Recognition as Claimed by Businesses Owned by Individual Enrolled Members of Indian Tribes**



Source: GAO analysis of SBA information. | GAO-22-104146

**Text of Figure 2: SBA’s Process to Verify Tribal Recognition as Claimed by Businesses Owned by Individual Enrolled Members of Indian Tribes**

**“Indian Tribe Name” Tribal Membership Card**

**Is “Indian Tribe Name” on the *Federal Register* list?**

In 2020, Small Business Administration (SBA) officials told us that they cross reference the tribe’s name against the Bureau of Indian Affairs most recent publication in the Federal Register.

- Yes: SBA accepts Indian tribe’s federal recognition for purposes of program eligibility
- No: SBA may request additional evidence of Indian tribe’s federal recognition

**Is “Indian Tribe Name” referenced on the tribal card on the states’ website?**

In 2020, SBA officials told us that they conduct research of each claim of state recognition by going on the website for the state agency or entity responsible for handling state relations with Indian tribes. SBA can also conduct a review of state laws or resolutions recognizing a particular tribe.

- Yes: SBA accepts Indian tribe’s state recognition for purposes of program eligibility
- No: SBA may request additional evidence of Indian tribe’s state recognition

Source: GAO analysis of SBA information. | GAO-22-104146

To identify federally recognized Indian tribes, the SOP refers BOS to the BIA list.<sup>16</sup> For state-recognized Indian tribes, the BOS are expected to refer to state websites to verify recognition status. Unlike the BIA list for federally recognized Indian tribes that is published in the *Federal Register*, no federal agency maintains a list of state-recognized Indian tribes. SBA's SOP generally refers BOS to state websites for state-recognized Indian tribes. Specifically, according to SBA officials, the BOS review state websites, legislation, resolutions, and decisions from state executive bodies responsible for overseeing tribal recognition or affairs, or other sources that may reflect state-recognition. According to these officials, this research process is intensive given that state-recognition procedures can vary by state. These officials also told us that BOS generally rely on a statement from a state official with "proper authority" that a particular tribal entity is state-recognized.

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## OIG Report about SBA's Procedures for Verifying Tribal Recognition

The SBA OIG reported in March 2021 on its review of SBA's procedures for verifying federally and state-recognized Indian tribes.<sup>17</sup> It found that SBA adequately verified the federal or state-recognition of the Indian tribe for all but two of the 110 applications it reviewed, despite SBA not having formal documented procedures for verifying tribal recognition.<sup>18</sup> According to the OIG report, this lack of documented verification procedures could result in varied recognition decisions depending on which SBA employee reviews an applicant's supporting information. As a result, the OIG recommended that SBA document its verification procedures. SBA concurred with the recommendation. SBA officials told us that they are

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<sup>16</sup>As mentioned earlier, the BIA publishes an annual list in the *Federal Register* of all federally recognized Indian tribes eligible for federal programs and services as required by the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. § 5131. According to SBA officials, when verifying federal recognition, BOS are expected to cross reference the applicant's claim of the Indian tribe's recognition against the BIA's most recent published list in the *Federal Register*.

<sup>17</sup>Small Business Administration, Office of Inspector General, 21-12.

<sup>18</sup>The OIG reviewed 110 applications of participants accepted in the 8(a) program from fiscal years 2015 through 2018 who claimed socially disadvantaged eligibility through memberships in federally or state-recognized Indian tribes to assess the effectiveness of SBA's verification processes and procedures.

finalizing this effort and plan to complete implementation in December 2021.

SBA OIG also recommended that SBA review the eligibility of the businesses the OIG identified as owned by individuals who were members of Indian tribes not federally or state-recognized to determine whether the businesses are eligible to continue in the program and take prompt action to remove businesses found to be ineligible.

SBA disagreed with this recommendation. SBA determined the two businesses identified by the OIG were eligible to participate in the 8(a) program and clarified that it did not require that the Indian tribes that could be deemed to have met the state-recognition requirement must also be those recognized by the states with formal recognition procedures.<sup>19</sup> Under this interpretation of the regulations, SBA concluded the two businesses were, in fact, state-recognized and therefore met the socially disadvantaged requirement when admitted into the program. SBA OIG closed this recommendation noting that SBA's proposed corrective actions to address the first recommendation will resolve the issues identified and satisfy the intent of both recommendations.

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## All but One of the Business Applicants Certified to Participate in the 8(a) Program Were Associated with a Recognized Indian Tribe

Our analysis of Certify application data for fiscal years 2018 through 2020 found that all but one of the businesses certified by SBA to participate in the 8(a) program were associated with a federally or state-recognized Indian tribe as claimed. We examined 133 applications associated with businesses that claimed ownership by individual members of federally or state-recognized Indian tribes and tribally owned businesses during this

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<sup>19</sup>As mentioned earlier, in 2012, we reported that some states have formalized their procedures for recognizing tribes and some have not. In SBA's response to the OIG's March 2021 report, SBA clarified that although 13 states have a formal recognition process whereas 37 do not, SBA regulations do not require that that an Indian tribe is deemed state-recognized if the recognition was determined by a state with formal recognition procedures.

period for participation in the 8(a) program. Of the 133 applications examined, 122 were admitted to the program during this period.<sup>20</sup>

Our analysis found that one application's associated Indian tribe was not federally recognized as claimed. We were unable to confirm that the evidence SBA used to verify tribal recognition supported its conclusion that the Indian tribe was federally recognized. According to SBA officials, the applicant provided a tribal membership card and a tribal letter implying the Indian tribe that the applicant claims to be a member of is a sub-set of a federally recognized Indian tribe.<sup>21</sup> However, our analysis showed that the claimed Indian tribe was not on the BIA list of federally recognized Indian tribes. Additionally, we also found that in a recent federal court case the claimed Indian tribe did not dispute the government's assertion that the claimed Indian tribe is not federally recognized. We shared our analysis with SBA officials, who advised us that based on their subsequent review of the court's findings in 2020, SBA is initiating steps to terminate this entity's participation in the 8(a) program.

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## Covert Results Demonstrated that SBA Took Steps to Verify the Status of Tribal Recognition

Our covert testing results demonstrated that SBA took steps during its screening process to verify the recognition status of the fictitious Indian tribes of which our fictitious applicants claimed to be members during our testing period in fiscal year 2021, as described in figure 3. The results of our covert tests are illustrative and are not generalizable to the universe of 8(a) applicants.

Specifically, we created four fictitious businesses and individual owners claiming membership in a fictitious Indian tribe. We then used Certify to submit the fictitious 8(a) applications and associated documentation. Such documentation included copies of fictitious tribal membership cards that SBA would use to verify the Indian tribe's federal or state-recognition.

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<sup>20</sup>Of the 133 applications examined, 11 were denied based on not meeting program requirements other than tribal recognition.

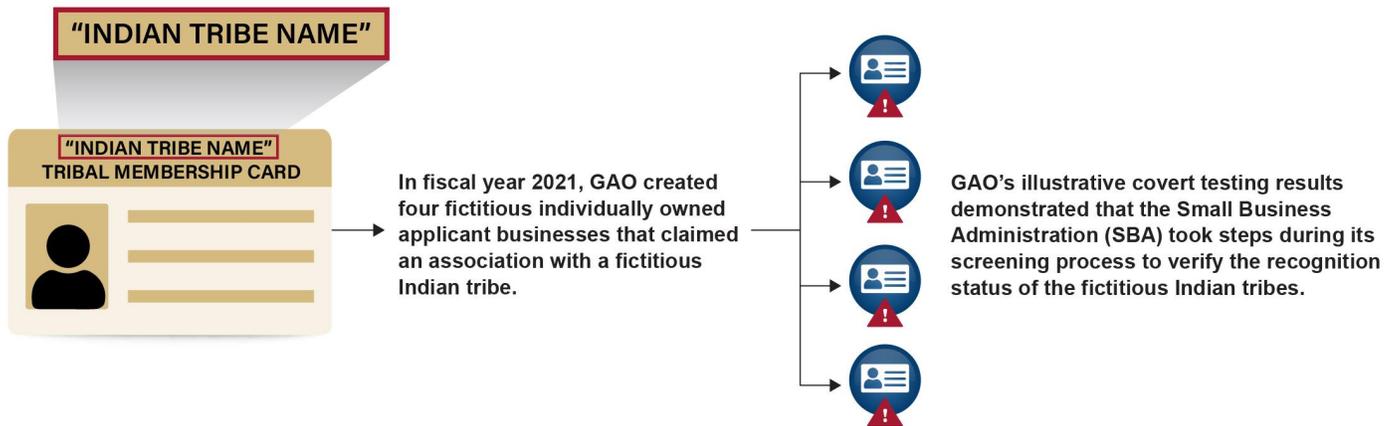
<sup>21</sup>The applicant was distinct from the two applicants that the SBA-OIG determined, in March 2021, were not associated with a state-recognized Indian tribe as claimed, as described earlier in this report.

In all four cases, the tribal membership cards submitted contained fictitious tribal names.<sup>22</sup>

As mentioned earlier, SBA officials told us that during the review period for individually owned applicants, SBA reviewers, including BOS, use the tribal membership card and other documentation provided by the applicant to verify the applicant’s socially disadvantaged status by confirming that the tribe named on the card is a federally or state-recognized Indian tribe.

In all four cases, our testing results demonstrated that SBA took steps to verify recognition of our fictitious tribes. In three cases, the SBA BOS asked for additional evidence of meeting the socially disadvantaged requirement beyond the submitted tribal membership card.<sup>23</sup> In the fourth case, the BOS concluded that the Indian tribe was neither federally nor state-recognized based on the information contained on the submitted tribal membership card.

Figure 3: Covert Results Demonstrated that SBA Took Steps to Verify the Recognition Status of Our Fictitious Indian Tribes



Source: GAO analysis of SBA information. | GAO-22-104146

<sup>22</sup>According to SBA officials, such applicants submit a copy of their tribal membership card that indicates tribal membership. Our tribal membership cards displayed the name of the fictitious business owner and the tribe, but did not indicate whether the tribe was state or federally recognized.

<sup>23</sup>Each of the four fictitious applications was reviewed by a different SBA BOS.

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**Text of Figure 3: Covert Results Demonstrated that SBA Took Steps to Verify the Recognition Status of Our Fictitious Indian Tribes**

**“Indian Tribe Name” tribal membership card**

In fiscal year 2021, GAO created four fictitious individually owned applicant businesses that claimed an association with a fictitious Indian tribe.

GAO’s illustrative covert testing results demonstrated that SBA took steps during its screening process to verify the recognition status of the fictitious Indian tribes.

Source: GAO analysis of SBA information. | GAO-22-2104146

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## Agency Comments

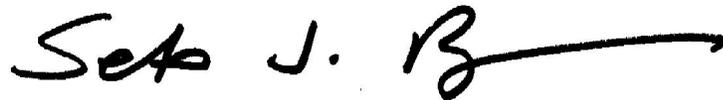
We provided a draft of this report to the SBA for its review and comment. In its comments, SBA provided technical comments, which we incorporated, as appropriate.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees. In addition, the report will be available at no charge on the GAO website at <https://www.gao.gov>.

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If you or your staff have any questions about this report, please contact Seto Bagdoyan at (202) 512-6722 or [bagdoyans@gao.gov](mailto:bagdoyans@gao.gov), or James (Howard) Arp at (202) 512-6722 or [arpj@gao.gov](mailto:arpj@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs are on the last page of this report. GAO staff who made key contributions to this report are listed in the appendix.

Sincerely yours,

Handwritten signature of Seto J. Bagdoyan in black ink, featuring a stylized 'S' and 'B' with a long horizontal stroke extending to the right.

Seto J. Bagdoyan  
Director of Audits  
Forensic Audits and Investigative Service

Handwritten signature of James (Howard) Arp in black ink, written in a cursive style.

James (Howard) Arp  
Director of Investigations  
Forensic Audits and Investigative Service

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## Appendix: GAO Contacts and Acknowledgments

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### GAO Contacts

Seto Bagdoyan at (202) 512-6722 or [BagdoyanS@gao.gov](mailto:BagdoyanS@gao.gov)

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### Staff Acknowledgments

In addition to the contacts named above, Olivia Lopez (Senior Auditor), Bethany Gracer (Analyst), Robert Graves and Philip Reiff (Assistant Directors), Flavio Martinez (Analyst-in-Charge), Jeremy Kamphuis, and Patricia L. Powell made key contributions to this report. Also contributing to the report were James Ashley, Dave Bruno, Jacqueline Chapin, Alexandra Dew Silva, Colin Fallon, James Murphy, Barbara Lewis, Katherine Lewis, Maria McMullen, Roland Molina, Jonathon Oldmixon, Jenny Shinn, Steven Stern and Erica Varner.

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